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Charitable Remainder Trust U/A 12803, John E. Guinness Revocable Trust Dtd.
6/11/92, Raymond M. Murphy, and Peter A. Carfegna Charitable Remainder Trust*

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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In re:

BERNARD L. MADOFF,

Debtor.

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Adversary Proceeding
No. 08-01789-BRL

SIPA Liquidation
(Substantively Consolidated)

**OBJECTION OF WILLIAM B. KORB IRA, ROGER A. ENRICO IRA,
CHARLES & MIRIAM WOOD CHARITABLE REMAINDER TRUST U/A 12803,
JOHN E. GUINNESS REVOCABLE TRUST DTD. 6/11/92, RAYMOND M.
MURPHY, AND PETER A. CARFEGNA CHARITABLE REMAINDER TRUST
TO TRUSTEE'S DETERMINATION OF CLAIM**

William B. Korb IRA, Roger A. Enrico IRA, Charles & Miriam Wood Charitable Remainder Trust U/A 12803, John E. Guinness Revocable Trust Dtd. 6/11/92, Raymond M. Murphy, and Peter A. Carfegna Charitable Remainder Trust (hereinafter “Objectors”), by and through undersigned counsel, as and for their Objection to the Trustee’s Determination of Claim regarding the SIPC Benefit Claims filed by Objectors, respectfully represent as follows:

1. Objectors timely filed the following claims (the “Claims”) against this estate:

<u>Investor</u>	<u>Claim No.</u>
William B. Korb IRA	015257
Roger A. Enrico IRA	014860
Charles & Miriam Wood Charitable Remainder Trust U/A 12803	015270
John E. Guinness Revocable Trust Dtd. 6/11/92	014405
Raymond M. Murphy	014863
Peter A. Carfegna Charitable Remainder Trust	To Be Provided

2. The Trustee issued a “Notice of Trustee’s Determination of Claim,” denying the “customer claim” of each Objector. Each Notice of Trustee’s Determination of Claim states: “Based on a review of available books and records of BLMIS by the Trustee’s staff, you did not have an account with BLMIS. Because you did not have an account, you are not a customer of BLMIS under SIPA as that term is

defined at 15 U.S.C. § 7811l.” The Trustee’s determination is incorrect and unjustified by the law and the facts.

3. Objectors are all entities that invested in Bernard L. Madoff Investment Securities, LLC (“BLMIS”) through two “feeder funds” of BLMIS: Fairfield Sentry Fund and Greenwich Sentry Fund. Those firms acted as agents of BLMIS by recruiting investors, such as Objectors, to invest in BLMIS and by acting as the agent to receive the investments and direct them to BLMIS. Objectors were informed that the only way they could invest in BLMIS were through the agency of these two funds; without utilizing the services of those two funds, they would be unable to invest in BLMIS. Objectors relied on the representations that Greenwich Century and Fairfield Century were agents of BLMIS to accept funds on behalf of BLMIS. Accordingly, each of the Objectors is a “customer” of BLMIS as defined in 15 U.S.C. § 78111 as follows:

Any person (**including any person with whom the debtor deals as principal or agent**) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term “customer” includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities ... (emphasis added)

15 U.S.C. § 78111.

4. The statute defining “customer” includes “any person with whom the Debtor deals as principal or agent.” In this case, Greenwich Sentry and Fairfield Sentry were indeed agents of BLMIS, and the purpose of the agency was to solicit funds from an investor such as Objectors. It is solely through that agency and that purpose that Objectors invested their money with said agents to be invested with BLMIS.

5. Whether a claimant is a “customer” does not depend upon whom he handed his cash or made his check payable, or even where the funds were initially deposited. *In re Old Naples Securities, Inc.*, 223 F.3d 1296, 1302-1303 (11th Cir. 2000). Instead, the issue depends upon whether there was “actual receipt, acquisition or possession of the property of a claimant by the brokerage firm under liquidation.” *Id.* Here, the Objectors can show that there was “actual receipt, acquisition or possession” of their property by the Debtor, through its agents, Fairfield Sentry and Greenwich Sentry.

6. For the reasons stated, the Court should find that Objectors are Customers within the definition of 15 U.S.C. Section 7811(2).

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7. These Objectors join in the objections of all other claimants in the same position and reserve their right to respond to the Trustee and to the extent they deem necessary, to file a supplemental memorandum of law.

Dated: Garden City, New York
January 7, 2010

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